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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967.

No. 803

UNITED STATES GYPSUM COMPANY,
Petitioner and Appellant Below,

vs.

UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Respondent and Appellee Below.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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UNITED STEELWORKERS OF AMERICA, AFL-CIO,
Respondent and Appellee Below.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on September 21, 1967.

CITATIONS TO OPINIONS BELOW.

The findings of fact and conclusions of law and judgment of the District Court are not reported and are set out in the record printed in the Court of Appeals (R. 94-100). The opinion of the Court of Appeals, printed in Appendix B hereto (pp. ix-xxvii) has not yet been officially reported. The decision of the NLRB, printed in Appendix C hereto (pp. xxviii-xxxiii) is reported in 1967 CCH ¶ 20,836.

JURISDICTION.

The judgment of the Court of Appeals was entered on September 21, 1967 (R. 133). The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Whether a purchaser and subsequently operator of a lime plant property, who was not advised until after the purchase by a labor organization of its claims under an existing collective agreement with the seller and did not assume that agreement, is obligated under the arbitration clause in said agreement to arbitrate with said labor organization grievances alleging purchaser's refusal to recognize (1) said labor organization as collective bargaining representative and (2) said collective agreement, where said labor organization has been decertified by the National Labor Relations Board as collective bargaining representative of the purchaser's employees in a representation proceeding instituted by the purchaser.

2. Whether the following grievances present arbitrable issues between a purchaser and subsequently operator of a lime plant property and a labor organization under the arbitration clause of a collective agreement between the seller and said labor organization giving the arbitrator jurisdiction and authority "to interpret, apply or determine compliance with the provisions of this agreement" and providing that, "The arbitrator shall not have jurisdiction or authority to add to, detract from, or alter in any way the provisions of this contract":

(a) The refusal of said purchaser to recognize said collective agreement, where the agreement did not contain any provisions pertaining to the obligations of a purchaser of said property and the usual clause

that the agreement is binding upon the successors and assigns of the parties.

(b) The alleged failure of said purchaser to comply with an alleged seniority clause in said collective agreement, where there remains unresolved a genuine issue of fact as to whether said seniority clause was a part of said collective agreement at the time of said purchase.

(c) The refusal of said purchaser to check off membership dues to said labor organization pursuant to authorizations given under said collective agreement and addressed to the seller, where said labor organization has not delivered to the purchaser check-off authorizations from any of the purchaser's employees and has been decertified by the National Labor Relation Board.

STATUTE INVOLVED.

The statutory provisions involved are Sections 7-9, 201, 203, 204, 301 and 302 of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519 (29 U. S. C. §§ 157-9, 171, 173, 174, 185 and 186), the pertinent provisions of which are printed in Appendix A (pp. i-viii).

STATEMENT.

The complaint in the District Court was filed by Respondent on June 11, 1965 under Section 301 of the Labor Management Relations Act, 1947, 61 Stat. 156 (29 U. S. C. § 185) for a declaratory judgment that Petitioner, who had purchased and subsequently operated a lime plant property at Montevallo, Alabama, was bound by the collective agreement existing between Respondent and the seller of said plant at the time of the purchase and for other relief, including an order on Petitioner to arbitrate Respondent's

claims of non-compliance with said agreement in accordance with the arbitration clause therein.

Petitioner filed a motion to dismiss the complaint, and on May 28, 1965 instituted a representation proceeding before the National Labor Relations Board to determine whether Respondent was the collective bargaining representative of employees at said plant. Respondent appeared in said proceeding and contended that its collective agreement with the seller was a bar to an election. On January 17, 1966, Petitioner filed its answer to Respondent's complaint and a motion to stay the action until disposition of said representation proceeding.

On March 11, 1966, the Board dismissed the representation proceeding on the ground that henceforth it would, before proceeding with an employer's representation petition, require an affirmative showing of good faith doubt of the union's majority status on the part of the Petitioner, and Respondent had made no such showing (157 NLRB No. 60). On March 28, 1966, Petitioner instituted a second representation proceeding before the Board which was supported by evidence of its good faith doubt of Respondent's majority status. This proceeding, by stipulation between Petitioner and Respondent, was referred to the Board for decision on the record in the prior representation proceeding.

On March 29, 1966, Respondent filed a motion for summary judgment. On May 27, 1966, Petitioner filed an amended answer to the complaint which included as defenses the modification of said collective agreement prior to Petitioner's purchase of the plant and the issues presented in this petition. Affidavits were filed in support of and opposition to the motions before the District Court.

On May 27, 1966, the District Court entered final judgment (1) denying Respondent's motion to stay the action

and (2) ordering the parties to submit to arbitration certain grievances submitted to Petitioner on May 17, 1965, *i.e.*:

> "1. The Company refuses to recognize and comply with the contract executed on March 30, 1965.
>
> "2. The Company has filled vacancies such as burner helper without complying with Article VIII of the contract.
>
> "3. The Company has failed and refused to deduct union dues in accordance with Article VI of the contract.
>
> "4. The Company has refused to recognize seniority as established in Article VIII of the contract.
>
> "5. The Company has announced that it is not bound by said contract.
>
> "6. The Company has refused to recognize or deal with the duly authorized officers and representatives of the Union."

Respondent's appeal from this judgment was docketed in the Court of Appeals on July 24, 1966.

On October 28, 1966, the Board, rejecting Respondent's contract bar contention, entered its decision and direction of election in the representation proceeding (161 NLRB No. 61). On December 2, 1966, after an election, the Board issued its certification that Respondent was not the collective bargaining representative of Petitioner's employees at said plant. This certification was brought to the attention of the Court of Appeals and the effect thereof considered by that Court.

The Court of Appeals, on September 21, 1967, issued its opinion and entered judgment affirming the judgment below. Petitioner here seeks review of that decision.

The basic facts set forth in affidavits presented to the District Court are undisputed. On March 30, 1965, Petitioner purchased the lime plant property of United Cement Company (seller) at Montevallo, Alabama, and in con-

nection with said purchase expressly refused to assume certain contracts of the seller, including the existing collective agreement with Respondent. This agreement, dated March 30, 1964, was for a term of three years, but Article VIII with reference to seniority and other provisions thereof had been abandoned prior to the purchase and were no longer a part of the agreement. The final step in the grievance procedure, Article IX of said agreement, provided for arbitration with the limitation that, "The arbitrator shall only have jurisdiction and authority to interpret, apply or determine compliance with the provisions of this agreement. The arbitrator shall not have jurisdiction or authority to add to, detract from, or alter in any way the provisions of this contract."

Petitioner commenced operation of said plant on April 5, 1965, at which time all former employees of the seller except three were employed by Petitioner, who manufactured substantially the same products as the seller. Petitioner's terms and conditions of employment at the plant were not different from those of the seller except that Petitioner did not check off union dues, advised employees that their seniority started from their employment by Petitioner and placed in effect, without objection from Respondent, improved group health insurance and safety programs. Length of service with the seller was given full recognition and employees have received vacations equal to or greater than the vacations which they would have received under said agreement.

Respondent did not contact Petitioner prior to the purchase other than by a letter mailed to Petitioner on March 29, 1965 stating that Respondent had been advised of the purchase and would be happy to meet with Petitioner. Petitioner heard nothing thereafter from Respondent until about May 3, 1965, at which time Respondent's business representative inquired by telephone concerning April, 1965

dues deductions and was told that Petitioner had not received check-off authorizations from any employees and that the deduction of Respondent's dues by Petitioner involved a legal question. Respondent stated it would submit a memorandum of its position. On May 17, 1965, Respondent presented the grievances *sub judice*. On May 28, 1965, Petitioner by letter advised Respondent, *inter alia*, that it had not purchased the seller in its entirety but only physical assets, that it had not deducted union dues because it had not received check-off authorizations from employees to do so, that information available to Petitioner indicated no union currently represented a majority of Petitioner's employees and Petitioner assumed that Respondent would include a statement of its representation status in the memorandum of its position mentioned in the telephone conversation on May 3, 1965. Without further contact with Petitioner, Respondent filed its complaint in the District Court.

REASONS FOR GRANTING THE WRIT.

1. The decision of the Court below on question one conflicts in principle with the decision of this Court in *Garment Workers* v. *Labor Board*, 366 U. S. 731, 738, that an employer may not extend exclusive recognition to a union which is not authorized to act as collective bargaining representative by a majority of the employees.

It is a basic part of the National Labor Relations Act that employees have freedom of choice of their collective bargaining representative and also the right to decline to be represented by a labor organization. Decertification proceedings are predicated on this latter right accorded by Section 7 of the Act (29 U. S. C. § 157) (*Glendale Manufacturing Co.* v. *Local 520, Etc.*, 283 F. 2d 936, 938 (CA 4, 1960))—a right expressly protected from union interference by Section 8(b)(1)(A) (29 U. S. C. § 158(b)

(1)(A)). Continued recognition of the repudiated representative by the employer following decertification by the Board would violate Sections 8(a)(1) and (2) of the Act. *Garment Workers* v. *Labor Board*, 366 U. S. 731, 737-738 (1960); *NLRB* v. *Clegg*, 304 F. 2d 168, 175-6 (CA 8, 1962).

The Act envisages a system of collective bargaining with labor organizations which have the support of a majority of the employees in the bargaining unit and hence rejects the conception that collective agreements, the end product of the bargaining process, outlast the decertification itself. Such contracts cannot endure in frustration of the public policy effectuated through the decertification proceeding. *Milk and Ice Cream Drivers Union, Local 98* v. *McCullough*, 306 F. 2d 763, 766 (CA D. C. 1962).

The Act requires that the collective agreement must be administered by a representative of the employees' own choosing. *Modine Mfg. Co.* v. *Grand Lodge Int. Ass'n of Mach.*, 216 F. 2d 326, 329 (CA 6, 1954). *Ergo*, such representative subsequent to his repudiation has no right to enforce the agreement including the processing and arbitration of grievances, which is clearly a part of the collective bargaining process as defined in Section 8(d) of the Act (29 U. S. C. § 158(d)). *McGuire* v. *Humble Oil & Refining Company*, 355 F. 2d 352, 358 (CA 2, 1966); *Retail Clerks* v. *Montgomery Ward & Co.*, 316 F. 2d 754, 757 (CA 7, 1963); *Glendale Manufacturing Co.* v. *Local 520, Etc.*, 283 F. 2d 936, 938 (CA 4, 1960).

The Court of Appeals ignored these principles under the misconception that Petitioner, a purchaser of a business property, was bound to arbitrate with Respondent under *Wiley* v. *Livingston*, 376 U. S. 543, 551 (1964), because, *inter alia*, of the "substantial continuity of identity in the business enterprise," regardless of the decertification of Respondent. Unlike *Wiley*, however, Respondent here seeks to be recognized as collective bargaining representative for all

of the employees in the unit and to administer the collective agreement governing employees whom it does not represent, having been decertified. In *Wiley*, this Court held that a labor organization could arbitrate for the employees that it represented but expressly refused to "suggest any view on the questions surrounding a certified union's claim to continued representation status following a change in ownership." (376 U. S. at 551.)

Any award of an arbitrator on the issue of recognition of Respondent cannot alter Respondent's representation status. An award in favor of Respondent would conflict with the Board's decertification decision and the Board's decision must prevail. *NLRB* v. *Warrensburg Board & Paper Corporation*, 340 F. 2d 920, 924 (CA 2, 1965); *Typographical Union* v. *NLRB*, 368 F. 2d 755, 757 (CA 5, 1966); *Carey* v. *Westinghouse*, 375 U. S. 261, 272 (1964); *Franks Bros. Co.* v. *Labor Board*, 321 U. S. 702, 704 (1944). There is no question here of the validity of the Board's decision. Respondent appeared in the proceeding and contended that its contract was a bar to an election and there was no lack of due process. *Milk and Ice Cream Drivers Union, Local 98* v. *McCulloch*, 306 F. 2d 763, 765 (CA D. C. 1962); *NLRB* v. *Warrensburg Board & Paper Corporation*, 340 F. 2d 920, 925 (CA 2, 1965); *Leedom* v. *International Broth. of Elec. Workers*, 278 F. 2d 237, 239 (107 U. S. App. D. C. 357, 359). Respondent took no steps to secure review of the Board's action. In addition, the issue of refusal to recognize Respondent does not assert violation of the collective agreement by Petitioner but only of an obligation imposed by law, an unfair labor practice under Section 8(a)(5) of the Act (29 U. S. C. § 158(a)) which is exclusively within the jurisdiction of the Board. *Independent Petroleum Workers* v. *American Oil Co.*, 324 F. 2d 903, 906 (CA 7, 1963); *Belsinger Signs, Inc.* v. *Electrical Workers*, 231 F. Supp. 741 (D. C. D. C. 1964),

aff'd 339 F. 2d 742; *Portland Webb Pressmen's Union* v. *Oregonian Pub. Co.*, 286 F. 2d 4, 10 (CA 9, 1960).

The decision of the Court below, that Petitioner is required to arbitrate with Respondent, a decertified union, with reference to its recognition as collective bargaining representative for all employees in the unit conflicts in principle with the landmark decision of this Court, *Garment Workers* v. *Labor Board*, 366 U. S. 731, 738, to the effect that continued recognition of the repudiated representative by the employer would constitute a violation of the Act. In addition, its decision that Petitioner is required to arbitrate recognition of said collective agreement, which also encompasses recognition of Respondent, conflicts in principle with the decision of the Court of Appeals of the District of Columbia, *Milk and Ice Cream Drivers Union, Local 98* v. *McCulloch*, 306 F. 2d 763, 766, hereinbefore cited, to the effect that a collective agreement cannot endure "in frustration of the public policy effectuated through section 9 proceedings" and also the decision of the Court of Appeals for the Sixth Circuit, *Modine Mfg. Co.* v. *Grand Lodge Int. Ass'n of Mach.*, 216 F. 2d 326, 329, that "the bargaining contract must be administered by a representative of the employees' own choosing" and decisions of the Courts of Appeal for the Fourth and Seventh Circuits, hereinbefore cited, to similar effect (283 F. 2d 936, 938; 316 F. 2d 754, 757). The decision would require Petitioner to violate the National Labor Relations Act by entering into arbitration with a decertified labor organization. Petitioner respectfully submits that it is of substantial importance to employers, employees and labor organizations and the National Labor Relations Board alike, and in the interest of industrial peace, that this conflict with regard to the recognition to be given to a decertification by the Board of the collective bargaining representative of employees following a transfer, however effected, of a business enterprise be finally resolved by this Court.

2. The decision of the Court below on question one also conflicts in principle with the many decisions of this Court and Courts of Appeal that federal policy requires the voluntary consummation of collective agreements as opposed to compulsory arbitration in labor disputes.

The duty to arbitrate grievances under the seller's collective agreement must be accommodated with the Act's policies favoring voluntary agreements and not permitted to encompass contract assumption—else compulsory arbitration comes into play and free collective bargaining is destroyed.

The decision below requiring Petitioner to arbitrate recognition of Respondent's collective agreement with the seller, which Petitioner did not assume, invests the arbitrator with authority to make the contract binding on Petitioner and thus to fix terms and conditions of employment—an area heretofore exclusively reserved to employers and employees through free collective bargaining and upon which the courts have never let the National Labor Relations Board encroach. See *NLRB* v. *Insurance Agents International*, 361 U. S. 477, 490 (1960); *NLRB* v. *Amer. Nat. Ins. Co.*, 343 U. S. 395, 404 (1952); *American Ship Bldg. Co.* v. *NLRB*, 380 U. S. 300, 317-8 (1965); *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45 (1937); *Cf. Terminal Railway Assoc.* v. *Brotherhood of R. R. Trnm.*, 318 U. S. 1, 6 (1943).

The duty to arbitrate is contractual in origin (*Steelworkers* v. *Warrior & Gulf Co.*, 363 U. S. 574, 582 (1960) and the settlement by arbitration of terms and conditions of employment should not be imposed by law (*Haynes* v. *U. S. Pipe and Foundry Co.*, 362 F. 2d 414, 416 f.n. 2 (CA 5, 1966)). The decision below, however, in a real sense, gives the arbitrator authority through the contract assumption issue to deny Petitioner freedom in the negotiation and

consummation of a contract and to establish continuing terms and conditions of employment between Petitioner and its employees. *Boston Printing Pressman's Union* v. *Potter Press,* 141 F. Supp. 553, 555 (D. Mass. 1956) aff'd 241 F. 2d 787 (CA 1, 1957) cert. denied 355 U. S. 817. This quasi-legislative arbitration ordered by the District Court conflicts so directly with the policy of the federal labor law that this Court declined to review a decision of the lower court refusing to order the arbitration of future contract terms even though the parties had originally agreed to such arbitration. *Austin Mailers Union* v. *Newspapers, Inc.,* 329 F. 2d 312 (CA 5, 1964), *cert. denied* 377 U. S. 985 (1964), *aff'g* 226 F. Supp. 600 (1963).

The decision below fails to recognize that the decision of this Court in *Wiley* is entirely consistent with the basic federal policy of voluntary consummation of collective agreements. *Wiley* involved rights of individual employees under an expired contract whereas this case involves an imposition *in futuro* on the purchaser and all of the employees of an entire collective agreement.

In addition, the decision of the Court below, by creating a situation under which employment relations with the new employer may be frozen, will tend to create employment unrest. There was no point in rejecting Respondent as exclusive bargaining representative if the employees would not be free to secure new terms of employment. *Cf. Fabrica De Muebles Puerto Rico,* 107 NLRB 905, 912-913 (1954). The repudiation of Respondent by Petitioner's employees indicated that the employees were dissatisfied with the contract or Respondent's administration thereof, or both. Under these circumstances the arbitration of recognition of Respondent and Respondent's agreement cannot be expected to promote industrial peace. This is particularly true in this action where the seller was a small corporation with limited resources and the purchaser a larger

corporation with comparatively ample assets, affording employees greater opportunity to better their position. This is illustrated in this case by the prompt instituting of an improved group insurance plan and improved safety program. The Court below refers to rights arising out of the agreement after the purchase and subsequent to decertification, citing as classic examples the right of seniority and rights under a welfare or pension plan. But the collective agreement here did not include a seniority clause and there was no welfare or pension plan under the seller. If these rights had existed their resolution could have been negotiated with the seller (*NLRB* v. *Royal Plating & Polishing Co., Inc.*, 350 F. 2d 191, 196 (CA 3, 1965); *New York Mirror*, 151 NLRB 834, 838 (1965)) and there was no need, if any basis, in this case for arbitration to settle these matters with the purchaser.

It is realized that a rule of law may not be derived from special circumstances of one case, but, generally speaking, it is natural that employees would expect different terms and conditions of employment from a new employer and, in most instances at least, hope to improve their lot. Cf. *American Seating Corp.*, 106 NLRB 250, 255 (1963). This is likely to be the fact in the present era of corporate acquisitions and because of the overall resultant inflation that has persisted since the beginning of the nation. There is also the probability of discouraging purchasers with the result that employees must remain with a small and probably less efficient operator. It is respectfully submitted that in view of the general economic situation and the circumstances present here, this Court should review the decision of the Court of Appeals directing arbitration by Petitioner of recognition of the collective agreement with the seller to determine whether it is consistent with basic federal labor policy and will promote the objectives of an arbitration in accordance with the decision of this Court in

Wiley, i.e., protect the interest of the employees and promote industrial peace.

3. The decision below on question two conflicts with the principle stated by this Court in *Atkinson* v. *Sinclair Refining Co.*, 370 U. S. 238, 241 (1961) and reiterated in *Wiley* v. *Livingston*, 376 U. S. 543, 547, that the obligation to arbitrate is contractual.

(a) In *Wiley*, this Court stated (p. 547), "The duty to arbitrate being of contractual origin, a compulsory submission to arbitration cannot precede judicial determination that the collective bargaining agreement does in fact create such a duty" and "an employer has no obligation to arbitrate issues which it has not agreed to arbitrate." Applying this criteria to the collective agreement here discloses that the seller did not agree to arbitrate whether a future purchaser of the plant must recognize the agreement. It gave the arbitrator jurisdiction to interpret, apply and determine compliance with only "the provisions of this agreement." The agreement was solely with the seller. It contained no provisions pertinent to a sale of the property and no provision with reference to successors and assigns. Nowhere in the agreement is there any provision to indicate that the parties thereto expected (certainly did not agree) to arbitrate whether the contract itself was binding on either party or a successor of either party. Article IX denying jurisdiction and authority in the arbitrator to "add to, detract from, or alter in any way the provisions of this contract" makes it clear that an arbitrator could find the agreement applicable to Petitioner only by going outside of the contract and dispensing "his own brand of industrial justice." *Steelworkers* v. *Enterprise Corp.*, 363 U. S. 593, 597 (1960).

(b) This same principle applies to the grievance with reference to failure to comply with the alleged seniority

provision. There is an unresolved issue in the pleadings as to whether the collective agreement in effect at the time of the purchase included the seniority clause. Uncontradicted affidavits before the District Court state that this clause had been abandoned. Seniority is contractual. In the absence of a contract obligation, express or implied from plant practices, or statute creating seniority, there can be no seniority rights. *Trailomobile Co.* v. *Whirls,* 331 U. S. 40, 53 (1957); *Fagan* v. *Penn. R. R. Co.,* 173 F. Supp. 465, 470 (E. D. Pa. 1959); *Flowers* v. *Locomotive Fireman and Enginemen,* 212 Ga. 142, 91 S. E. 2d 41, 43 (1956). There could be no agreement to arbitrate the interpretation and application of or compliance with a provision that was not a part of the contract.

Whether there is an agreement to arbitrate a grievance with reference to seniority or an agreement to arbitrate the recognition by the purchaser of an unexpired collective agreement of the seller are legal questions to be decided by the court, not an arbitrator. *Atkinson* v. *Sinclair Refining Co.,* 370 U. S. 238, 241. In *Wiley,* this Court did not hold that the entire collective agreement was binding on a successor-employer. Also inherent in the arbitration of these grievances is the statutory prohibition against arbitrating with a decertified union, discussed *supra* pp. 7-10.

4. On the issue of check-off, Section 302 of the National Labor Relations Act, as amended (29 U. S. C. § 186) prohibits in general the delivery or payment to or receipt by any labor organization which represents or seeks to represent an employer's employees or admits such employees to membership, of any money or thing of value from an employer, unless a written assignment in the prescribed form from each employee from whose paycheck the amounts are to be deducted has been delivered to the employer. The collective agreement between seller and Respondent provided for the deduction of union dues "from the pay

of employee who gives written authorization to the Company for such deduction." The authorizations delivered to the seller were addressed to the seller. Respondent delivered to Petitioner no check-off authorizations from any of Petitioner's employees. Petitioner could not lawfully check off Respondent's union dues in the absence of valid check-off authorizations from employees. *Carpenters Union* v. *Ebanistiria Quintana,* 56 LRRM 2391 (D. P. R. 1964); *New Jersey Bell Telephone Co.* v. *Communication Workers of America,* 5 N. J. 354, 75 Atl. 2d 721, 728 (1950).

It would not be in the interest of industrial peace to compel arbitration of this issue, involving a clearly illegal act, on the basis indicated by the Court below, that if the arbitrator found for Respondent the award could not be enforced. On that basis, the Court would be justified in compelling arbitration of an issue, to take an extreme example, requiring murder.

If a check-off provision in a seller's contract is to be binding on a purchaser of the plant property, it is of substantial importance for the employer, the employees and the labor organization to know whether the wage deduction authorizations delivered to the seller authorize deductions by the purchaser in accordance with Section 302 of the Act (29 U. S. C. § 186), or whether new authorizations must be delivered. This is a legal question which as a general rule an arbitrator is not competent to handle. A hearing before an arbitrator as to the existence or validity of such obligations can accomplish nothing and may well arouse the resentment of the employees.

5. The decision of the Court below on question two with reference to check-off also conflicts with the decision of the Sixth Circuit, *Modine Mfg. Co.* v. *Grand Lodge Int. Ass'n of Mach.,* 216 F. 2d 326, 329, that a provision for check-off of dues cannot be enforced by a decertified union.

The Sixth Circuit stated in that case that the check-off of dues to a union that has been decertified by the Board, would run counter with the entire spirit of the Act (216 F. 2d 326, 329 (CA 6, 1954)). Petitioner should not be required to arbitrate whether it must violate the Act. *McLeod* v. *Television & Radio Artists,* 234 F. Supp. 832, 842 (D. N. Y. 1964) *aff'd per curiam* 351 F. 2d 310 (CA 2, 1965); *Smith* v. *Gladney,* 128 Tex. 354, 98 S. W. 2d 351, 352 (1936); *Loving & Evans* v. *Blick,* 33 C. 2d 603, 204 P. 2d 23, 28 (1949).

6. This case involves substantial questions of law under the Act pertaining to the recognition to be accorded a certification of the National Labor Relations Board and the issues which a successor-employer must arbitrate under the collective agreement of its predecessor. These questions are of great importance in the administration of the Act and to the collective bargaining relationship throughout the country.

CONCLUSION.

For the foregoing reasons, it is respectfully requested that this petition for a writ of certiorari be granted.

Respectfully submitted,

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